

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,	:	No. 3:03cr242
	:	
	:	(Judge Munley)
v.	:	
	:	
THOMAS LEE,	:	
Defendant	:	

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MEMORANDUM

Before the court is defendant's motion to proceed with his motion pursuant to 28 U.S.C. § 2255 (Doc. 187).

Background

Movant Thomas Lee was indicted in September 2003 for conspiracy to possess with intent to deliver more than 500 grams of cocaine. (See Doc. 1). On May 28, 2004 Lee pled guilty to conspiracy to distribute in excess of five grams of base cocaine. (See Doc. 73). On February 3, 2005, the court sentenced the defendant to 152 months in prison. (See Doc. 130). On November 17, 2005, Lee filed a motion to vacate his sentence, alleging that his counsel had rendered ineffective assistance. (See Doc. 156). On October 5, 2006, the court held a hearing on that motion. (See Doc. 180). At that hearing, Lee withdrew his motion. (Id.). On June 21, 2007, the United States filed a motion for a reduction in plaintiff's sentence. (See Doc. 184). The court granted this motion on July 19, 2007, reducing Lee's sentence to 132 months. (See Doc. 185).

On February 27, 2009, Lee filed a motion seeking leave to proceed with his motion to vacate. (Doc. 187). Lee asked the court to address the 28 U.S.C. § 2255 motion he originally filed. (Id. at 1). Lee contends that when he agreed to withdraw his motion on October 6, 2006, his attorney had requested leave from the court to keep his motion open to be revisited at a later date. (Id.). The court, movant avers, acceded to this request. (Id.). Plaintiff has not revisited the motion before now because he has faced “hardship and duress.” (Id.). He therefore seeks to have the court rule on his Section 2255 motion as originally filed.

Discussion

A review of the court transcript from the October 5, 2006 hearing where the movant withdrew his motion to vacate reveals that no grounds exist to grant the instant motion. At that hearing, the parties came to an agreement that plaintiff would withdraw his motion “with the understanding that he will have leave to refile it if that matter that he is pursuing with the Government does not result in the Government filing a departure motion based upon the information and the cooperation he has promised to give.” (Transcript of Proceedings held October 5, 2006 (hereinafter “T.”) (Doc. 188) at 2-3). The government agreed that if the defendant’s cooperation did not lead to a motion for a reduction of the sentence, he would be allowed to “refile this motion regardless of any time period that went by.” (Id. at 3). At the hearing, the movant agreed that he was “voluntarily and knowingly” waiving his right to continue with his motion because he wanted “to explore the possibility of cooperating

with the Government in hopes that [he] will get a departure motion that will reduce [his] sentence." (Id. at 4). Movant also agreed that "if [his] cooperation does not result in the filing of a departure motion by the Government, [he] will be able to refile or file another motion under 2255 raising the same allegations that [he has] made here and go forward with the hearing." (Id.).

As the transcript of the hearing makes clear, the defendant withdrew his motion to vacate pursuant to 28 U.S.C. § 2255 with the understanding that he could move to have the court reconsider that motion if the government failed to file a motion to reduce his sentence. The record makes clear that the government did file a motion to reduce the sentence, and that the court granted the motion, reducing the sentence by twenty months. The grounds agreed upon by the parties and the court for considering the defendant's motion to vacate do not, therefore, exist. The court will thus deny the defendant's motion to proceed with his Section 2255 petition. An appropriate order follows.

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ORDER

AND NOW, to wit, this 4th day of March 2009, Defendant Thomas Lee's motion to proceed with his 2255 motion (Doc. 187) is hereby **DENIED**.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
UNITED STATES DISTRICT COURT